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HOUSE BILL 816

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO WATER; AMENDING THE GROUND WATER STORAGE AND RECOVERY ACT; PROVIDING FOR AQUIFER CONSERVATION RE-INJECTION PERMITS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 72-5A-3 NMSA 1978 (being Laws 1999, Chapter 285, Section 3, as amended) is amended to read:

"72-5A-3. DEFINITIONS.--As used in the Ground Water Storage and Recovery Act:

A. "aquifer" means a geologic formation that contains sufficient saturated material to be capable of storing and transmitting water in usable quantities to a well;

B. "aquifer conservation re-injection project" means a project by a water user through which the water user re-injects potable water into an aquifer to reduce the net

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1 effects of the user's withdrawals from the aquifer and reduce
2 the effects on other water users from the user's withdrawals;

3 [B-] C. "area of hydrologic effect" means the
4 underground area where the water is stored and located,
5 hydrologically connected surface waters, adjacent underground
6 areas in which water rights exist that may be impaired, the
7 land surface above the underground areas and any additional
8 land surface used for seepage or infiltration;

9 [G-] D. "governmental entity" means the interstate
10 stream commission, an Indian nation, tribe or pueblo or state
11 political subdivision, including a municipality, county,
12 acequia, irrigation district or conservancy district;

13 [D-] E. "project" means a permitted, engineered
14 facility designed specifically, constructed and operated
15 pursuant to the Ground Water Storage and Recovery Act, to add
16 measured volumes of water by injection or infiltration to an
17 aquifer or system of aquifers, to store the water underground
18 and to recover it for beneficial use pursuant to the Ground
19 Water Storage and Recovery Act but shall not include in situ
20 leach mining operations or water flood operations for petroleum
21 recovery that require approval by the state engineer outside
22 the Ground Water Storage and Recovery Act; and

23 [E-] F. "stored water" means water that has been
24 stored underground for the purpose of recovery and permitted
25 pursuant to the Ground Water Storage and Recovery Act."

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1 Section 2. Section 72-5A-4 NMSA 1978 (being Laws 1999,
2 Chapter 285, Section 4) is amended to read:

3 "72-5A-4. PERMIT REQUIRED.--

4 A. No governmental entity may construct and
5 operate a storage and recovery project in a declared ground
6 water basin without a permit from the state engineer and
7 other permits that may be required.

8 B. The state engineer shall prescribe application
9 forms for a permit. The application shall include:

10 (1) an application fee in the amount of five
11 thousand dollars (\$5,000) plus five dollars (\$5.00) per acre-
12 foot of the annual capacity of the proposed storage and
13 recovery project, not to exceed fifty thousand dollars
14 (\$50,000); an annual fee of fifty cents (\$.50) per acre-foot
15 of water stored, payable upon submission of the annual report
16 required by the Ground Water Storage and Recovery Act;

17 (2) the name and mailing address of the
18 applicant;

19 (3) the name and mailing address of the
20 owner of the land on which the applicant proposes to operate
21 the project;

22 (4) the name of the declared underground
23 water basin in which the applicant proposes to operate the
24 project;

25 (5) the legal description of the location of

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1 the proposed project;

2 (6) evidence of financial and technical
3 capability;

4 (7) the source, annual quantity and quality
5 of water proposed to be injected and the quality of water in
6 the receiving aquifer;

7 (8) the identification, characteristics,
8 capacity and location of each recharge and recovery well,
9 including existing pre-basin wells, existing permitted wells
10 and new wells sought to be drilled for recharge or recovery
11 pursuant to the application and the identification of
12 existing permitted and declared wells in the underground area
13 [~~effected~~] affected by storage and recovery operations;

14 (9) a description of the proposed project,
15 including its capacity, plan of operation and percentage of
16 anticipated recoverable water;

17 (10) evidence that the applicant has a valid
18 water right quantified by one of the following legal
19 processes:

20 (a) a water rights adjudication;
21 (b) a consent decree;
22 (c) an act of congress, including a
23 negotiated settlement ratified by congress;

24 (d) a contract pursuant to 43 U.S.C.
25 620 et. seq.; or

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1 (e) an agreement with an owner who has
2 a valid water right subject to an application for a change in
3 purpose, place of use or point of diversion;

4 (11) a project plan that:

5 (a) shows that the project will not
6 cause harm to users of land and water within the area of
7 hydrologic effect;

8 (b) demonstrates that the project is
9 hydrologically feasible;

10 (c) demonstrates that the project will
11 not impair existing water rights or the state's interstate
12 obligations;

13 (d) demonstrates that the project will
14 not be contrary to the conservation of water within the
15 state; and

16 (e) demonstrates that the project will
17 not be detrimental to the public welfare of the state;

18 (12) a sworn statement executed by the owner
19 of the land that the applicant is granted an easement and
20 authorization to construct and operate the project on the
21 site, if project facilities are located on land not owned by
22 the applicant;

23 (13) copies of completed applications for
24 all other permits required under state and federal law;

25 (14) the proposed duration of the permit;

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1 and

2 (15) any additional information required by
3 the state engineer.

4 C. No entity may re-inject water into an aquifer
5 in a declared ground water basin without a permit from the
6 state engineer and other permits required by law.

7 D. The state engineer shall prescribe application
8 forms for an aquifer conservation re-injection permit. The
9 application shall include all of the elements required
10 pursuant to Subsection B of this section, except those in
11 Paragraphs (1) and (8) of that subsection relating to
12 recovery of water. No aquifer conservation and re-injection
13 permit may allow the recovery of injected water. The
14 application shall contain proof that:

15 (1) the water to be injected meets all
16 standards for potability pursuant to law and regulations;

17 (2) once the water has been re-injected into
18 the aquifer it becomes public water available for
19 appropriation for beneficial use; and

20 (3) if the water re-injected is treated
21 wastewater, the applicant has the legal right to use that
22 water for the purposes contained in the application and, if
23 water rights are required, they are limited to the actual
24 increased consumptive effect of the re-injection on the
25 aquifer.

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